

CITY OF DURHAM

And

DURHAM COUNTY

**PASS-THROUGH AGREEMENT FOR THE ALLOCATION, DISBURSEMENT
AND ACCOUNTING OF THE SECTION 5316, JOB ACCESS REVERSE
COMMUTE (JARC) FUNDS**

Dated as of _____, 2013

**CITY OF DURHAM
and
DURHAM COUNTY**

**PASS-THROUGH AGREEMENT FOR THE ALLOCATION, DISBURSEMENT
AND ACCOUNTING OF THE SECTION 5316, JOB ACCESS REVERSE
COMMUTE (JARC) FUNDS**

THIS AGREEMENT ("Agreement") made and entered into this the _____ day of _____, 2013 between the City of Durham, North Carolina municipal corporation (hereinafter "City") and the and the County of Durham, a political subdivision of the State of North Carolina (hereinafter "County"). This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes. This agreement addresses the allocation, disbursement and accounting of Federal Transit Administration (FTA) funds to support the Job Access Reverse Commute (JARC) and New Freedom (NF) activities for the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO), for and in consideration of the mutual promises and covenants hereinafter set forth, the City and Durham County as follows:

1. Purpose. The purpose of this Pass-through Agreement is to define the allocation, accounting and disbursement of Section 5316 JARC funds received by the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO) from the Federal Transit Administration (FTA) of the United States Department of Transportation (USDOT) pursuant to the SAFETEA-LU legislation and FTA Circular 9050.1. The projects to be undertaken by Durham County pursuant to this agreement shall be determined by competitive process and approval by the Transportation Advisory Committee (TAC). Durham County agrees to perform its work in accordance with this contract and all federal and state requirements.
2. Method of Financing. The total amount of Section 5316 JARC funds available to the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization will be determined annually by the Federal Transit Administration (FTA). The portion of these funds to be passed through to Durham County by the City will be determined by the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO) Transportation Advisory Committee (TAC) through a competitive process. Durham County will provide local matching funds as specified in this agreement and Attachment B in order to receive the Sections 5316 funds. The City will process reimbursements to Durham County, subject to the timely submission by Durham County to the City of all necessary reports and statements under the Section 5316 programs and within thirty (30) days of receipt by the City of the quarterly payment from NCDOT/FTA under the Sections 5316 programs.

3. Provisions and Certifications. Durham County shall make appropriate certifications of compliance with aforementioned JARC grant award. Durham County's certifications of compliance of the provisions contained herein shall be executed as part of this agreement. Durham County is required to prepare quarterly progress reports that include progress narrative, expenditures, matching sources used, number of passenger trips provided, breakdown of patrons served, vehicle miles traveled (VMT), vehicle hours, revenue miles, revenue service hours provided, vehicle maintenance records, vehicle condition log, any applicable purchasing from DBE vendors, etc
4. Compliance with Environmental Regulations. Durham County agrees and certifies it shall comply with applicable environmental regulations and requirements.
5. FTA Certification on Lobbying. Durham County is required to complete FTA's Certification on Lobbying prior to contract execution. All bids for equipment prepared by Durham County are required to contain this certification as well. Durham County is required to develop and implement a written code of ethics. All staff, officers, employees, board members or agents of the Durham County are required to comply with the code of ethics. The City of Durham shall verify compliance with this regulation during project monitoring visits.
6. FTA Drug & Alcohol Compliance. Durham County understands and complies with FTA mandated Drug and Alcohol Testing program, in accordance with 49 CFR Part 655. Durham County understands that the drug and alcohol policy and procedure will be reviewed and approved by the City of Durham. The City will monitor Durham County's drug and alcohol program proactively over the course of this agreement. At a minimum, Durham County will be required to provide a copy of its policy; employee and supervisor training documentation; name and location of the collection site, laboratory, MRO, SAP; a description of its random selection process; quarterly management reports summarizing test results; and annual reports
7. Prohibition on Exclusive School Transportation. Durham County understands that it may not provide school bus transportation. School bus transportation is defined by FTA as transportation exclusively for school students or personnel. Durham County will certify compliance. Durham County understands that a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation from the MPO.
8. Davis-Bacon Act. Durham County understands and will comply with applicable Davis-Bacon Act.
9. Durham County is required to submit all necessary documentation related to any applicable section of this JARC grant award.

10. Durham County is required to provide applicable non-federal matching funds for the Section 5316 grant funded awarded to Durham County. Durham County understands and certifies that grant funds shall be used to support up to 80 percent (80/20 match) for capital projects, and no more than 50 percent (50/50 match) for projects for operating assistance. Durham County certifies that fare revenues generated from the service provided shall not be used as matching funds for operating grants. Durham County also certifies that the non-federal share of eligible capital and planning costs shall be no less than 20 percent of the net cost of the activity, and the non-federal share for eligible operating costs shall be no less than 50 percent of the net operating costs. Further Durham County certifies that the Federal share of eligible capital costs may not exceed 80 percent of the net cost of the activity. Durham County shall use up to 10 percent of awarded apportionment to support program administrative costs including administration, planning, and technical assistance. Durham County shall provide to the City of Durham, financial documentation to demonstrate the availability of non-federal match funds. Proof of non-federal matching fund availability shall include at the minimum, three years federal and state income tax returns, a letter from CPA indicating source and availability of local match and account history and balance.

11. Continuation of Service after Grant Award. Durham County certifies that services funded by this JARC shall continue at a reasonable level after grant award.

12. Accounting Records. Durham County shall maintain accounting records and all other documents in full compliance with the provisions of paragraphs (a) through (f) of Section 12.1 of this Agreement and shall also maintain all other documents necessary for federal and state audit purposes. Durham County shall establish a budget code for the planning funds program.

12.1 Accounting Procedures

- a. A separate account should be established for the Section 5316 funds for each fiscal year and all transactions recorded in accordance with acceptable accounting procedures which are approved by N.C. Department of Transportation and US Department of Transportation. Attachment G of OMB Circular A-102 outlines standards for grantee financial management systems.
- b. The account established for the planning funds will be included in the annual audit of the agency in accordance with OMB Circular A-128.
- c. Time spent for staff services on work provided for in New Freedom programs shall be recorded by work task on either standard monthly, weekly, or biweekly time sheets for each individual and filed for audit purposes.
- d. Cost for transportation, office and other expendable supplies, printing, copying work, keypunching, computer processing, mapping and aerial photography should be supported by receipts, logs and vouchers as appropriate.

- e. Reimbursement should be on a basis of vouchers submitted and supported by similar documents as required of the Lead Planning Agency (LPA), the City of Durham, Department of Transportation. The vouchers should, at a minimum, specify the staff time expended and description of work task for which the reimbursement is requested. Work tasks must be consistent with task descriptions, objectives and expected deliverables (work products) specified in the project application process and consistent with the PMP.
 - f. The total amount Sections 5316 funds allocated to a project or projects by the TAC will be the controlling amount for which reimbursement can be claimed for a given fiscal year.
- 12.2 Reimbursement Procedures
- Invoices, documentation and reports should be submitted to the MPO Administrator, or appropriate LPA staff. Durham County shall submit an invoice and appropriate documentation and reports to the City 30 days after the end of the quarter, but no later than 45 days after the end of the quarter for funds expended during the subject period and the amount being requested for reimbursement. An invoice should include an attached quarterly expenditure report by work task. Identification of expenditures by work task shall include detailed evaluation of work accomplishments and work products and deliverables.
- 12.3 Quarterly Progress Report Procedures
- Quarterly progress reports should be submitted to the MPO LPA – the City of Durham, Department of Transportation no later than 30-45 days after the end of the quarter. The quarterly progress report should include a brief narrative report of transportation planning work accomplished by the planning agency and any subcontractor. The quarterly progress report shall be included with the invoice and expenditure report.
- 12.4. Annual Performance Report
- An annual performance report is to be submitted with the final planning funds invoice submission for a fiscal year. The written narrative of the performance report should (1) compare work accomplishments to anticipated work goal; (2) discuss progress in meeting schedules; (3) comment on significant task cost overruns/underruns; (4) identify any approved changes in the New Freedom funds; and (5) discuss any items of interest, i.e. reorganization and personnel changes. The narrative portion of the report should be concise, generally one to two pages in length. In order for NCDOT/USDOT September 30 deadlines, performance reports, documenting the previous fiscal year, must be submitted to the City of Durham, Department of Transportation no later than July 30th each year.
13. Audits. The City of Durham and NCDOT or USDOT shall be permitted to review, inspect, or study activities of the Durham County under the Section 5316 programs. Durham County shall bear the cost of any work not approved by the MPO, NCDOT and USDOT in the event an audit of expenses incurred by Durham County reveals costs which are not eligible for federal or state funding

but for which the city has invoiced on behalf of Durham County and reimbursed Durham County. Durham County agrees to reimburse the City, in full.

14. Personnel. The City Manager shall designate City personnel and Durham County shall designate Durham County's personnel as necessary to carry out the responsibilities of the City and Durham County respectively, under this Agreement.

15. Subcontractors. Durham County shall comply with the Equal Opportunity Provisions for Federal-Aid Contracts in accordance with Attachment A, which is attached hereto and incorporated herein and made part of this Agreement. Durham County shall comply with the subcontracting provisions and contained in the Federal-Aid Policy Guide, Part 172, and additions or amendments thereto.

16. Indemnification.

- a) To the maximum extent allowed by law, the Contractor shall defend, indemnify and save harmless Indemnitees from and against all charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of Contractor or Subcontractors or anyone directly or indirectly employed by the Contractor. In performing its duties under this section "a", Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to the City.
- b) Definitions. As used in subsections "a" above and "c" and "d" below-
"Charges" means claims, judgments, costs, damage, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution laws and regulations – including but not limited to any such alleged violation that arises out of handling, transportation, deposit, or delivery of the items or materials that are the subject of this contract).
"City" means the City of Durham.
"Contractor" means all parties to this Agreement other than the City.
"Indemnitees" means the City and its officers, officials, independent contractors, agents and employees.
- c) Limitations of Contractor's Obligation. Subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnities against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.
- d) Nothing in subsections "a", "b", or "c" above shall affect any warranties in favor of the City that are otherwise provided in this contract, this section (a, b, c, and d) is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

17. Duration of Agreement. The term of this Agreement shall begin upon mutual execution by the City and County and shall remain in effect until the Section 5316 funds are no longer available or until such time as the Agreement is terminated by the parties hereto. If the term of this Agreement has not expired before 11:59 P.M. on June 30, 2018, it shall expire at that time.
 18. Amendments. This Agreement may be amended by mutual agreement of the City and Durham County at any time by execution of a written agreement.
 19. Termination. This Agreement may be terminated by either party by providing one year written notice to other party.
 20. Nondiscrimination Policy. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.
 21. Headings. All headings that appear as section numbers in this Agreement are included for convenience only and shall not affect the meaning or interpretation of any of the provisions of the Contract.
 22. Entire Agreement. This Contract, Appendices and project awards, represents the entire and integrated agreement between the City and Durham County.
- [SIGNATURES APPEAR ON FOLLOWING PAGE(S)]*

The City and Durham County have each authorized this Agreement to be duly executed under seal.

City of Durham

By:

Attest:

By:

City Manager

City Clerk

This is to certify that on this day personally came before me _____, with whom I am personally acquainted, who being by me duly sworn, says that _____ is the City Manager and that he/she, the said _____, is the _____ Clerk of the City of Durham, the municipal corporation named within and which executed this foregoing instrument; that he/she knows the common seal of said corporation; that the seal affixed to said instrument is said common seal; that that name of the corporation was subscribed there to by said City Manager and that the Manager and said _____ Clerk subscribed their names thereto and said common seal was affixed, all by order of the City Council of the City of Durham and that said instrument is the act of deed of said corporation.

Witness my hand and notarial seal, this the _____ day of _____, 2013

SEAL

Notary Public

My commission expires: _____

Durham County Company

By:

Mike Ruffin, County Manager

Reviewed, approved as to legal form by:

Print Name, County Attorney

This is to certify that on this day personally came before me _____,
with whom I am personally acquainted, who being by me duly sworn, says that
_____ is the County Manager and that he/she, the
said _____, is the _____ Clerk of Durham
County, the municipal corporation named within and which executed this foregoing
instrument;; that he/she knows the common seal of said corporation; that the seal affixed
to said instrument is said common seal; that that name of the corporation was subscribed
there to by said County Manager and that the County Manager and said
_____ Clerk subscribed their names thereto and said common seal was
affixed, all by order of the Board of the Durham County Commissioners and that said
instrument is the act of deed of said corporation.

Witness my hand and notarial seal, this the _____ day of _____,
2012

SEAL

Notary Public

My commission expires: _____

PREAUDIT CERTIFICATE

This instrument has been preaudited in a manner required by the Local Government
Budget and Fiscal Control Act.

City Finance Officer

County Finance Officer

ATTACHMENT A

EQUAL OPPORTUNITY PROVISIONS For FEDERAL-AID CONTRACTS

Definitions. As used in these sections, “Municipalities” means municipal government, Entity, agency or any recipient of federal funds.

Municipality and agencies receiving transportation federal transportation funds agree to comply with Title VI of the Civil Rights Act of 1964, Environmental Justice (EJ) Executive Order 12898 and Limited English Proficiency (LEP) executive order. Title VI bars intentional discrimination as well as disparate impact discrimination. Executive Order 12898, states *“No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”* Executive Order 12898, Environmental Justice *“Each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”*

The U.S. Department of Transportation (USDOT) regulation and guidance, *DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations* in 1997, stresses three principles of environmental justice:

- a. *To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.*
- b. *To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.*
- c. *To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.*

Definition

1. Selection of Labor

During the performance of this Agreement, the Municipality will not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices

During the performance of this Agreement, the Municipality agrees to comply with all applicable provisions of 49 CFR 21 through Appendix H and 23 CFR 710.405 (b), EJ Executive Order 12898 and USDOT LEP Guidance (Fed Reg. Vol. 66, No. 14, p. 6733-6747) and the Civil Rights Act of 1964 as amended, and agrees as follows:

- a. The Municipality or recipient of federal funds will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Municipality or entity receiving federal funds will take affirmative action to ensure that applicants are employed, and that employees are treated during employment with out regard to their race, creed, color or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection of training including apprenticeship. The municipality agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this nondiscrimination clause.
- b. The Municipality or Entity will, in all solicitations or advertisements for employees and contractors by or on behalf of the municipality, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- c. The Municipality or Entity will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State, advising the labor union or workers' representatives of the Municipality's commitments under this Attachment and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Municipality or Entity will comply with all provisions of the Executive Order No. 11246 of September 24, 1965, as amended by Executive order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- e. The Municipality or Entity will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by the Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), and will permit access to its books, records and accounts by the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.

- f. In the event of the Municipality's or Entity's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Municipality may be declared ineligible for further Government contracts or Federally- assisted construction Agreements in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965 as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned Executive Order and regulations or otherwise provided by law.
- g. The Municipality or sub recipient will include the provisions of this paragraph 2 in every subcontract or purchase orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

3. Selection of Subcontractor, Procurements of Materials and Leasing of Equipment

During the performance of this Agreement, the Municipality or sub-recipient, for itself, its assignees, and successors in interest (herein referred to as the "Municipality") agrees as follows:

- a. Compliance with Regulations: The Municipality or sub-recipient will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710.450 (b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: The Municipality or sub-recipient with regard to the work program by them after award and prior to completion of the Agreement work will not discriminate on the ground of race, color, or national origin, in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Municipality or sub-recipient will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations: In all solicitations either by competitive bidding or negotiations made by the Municipality or sub-recipient for work to be performed under subcontract, including procurement of material or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the Municipality or sub-recipient of the Municipality's (or sub-

recipient's) obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

- d. Information and Reports: The Municipality will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Municipality or a Contractor is in exclusive possession of another who fails or refuses to furnish this information, the Municipality or sub-recipient will so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the Municipality's or Contractor's noncompliance with the non discrimination provisions of this paragraph 3, the State shall impose such contract sanctions as it may determine to be appropriate, including but not limited to :
 - (1) withholding of payments to the Municipality or sub-recipient under the Agreement until the Municipality or sub-recipient complies. And /or
 - (2) cancellation, termination or suspension of the Agreement in whole or in part.
- f. Incorporation of Provisions: The Municipality or sub-recipient will include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Municipality or sub-recipient will take such action with respect to any subcontract procurement or leases as the State may direct as a means if enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Municipality or sub-recipient becomes involved in, or is threatened with litigation with a subcontractor, or lessor as a result of such direction, the Municipality may request the State to enter into such litigation to protect the interests of the State, and in addition, the Municipality may request the United States to enter into such litigation to protect the interests of the United States.
- g. For contracts and subcontracts of amounts in excess of \$100,000 the Municipality or sub-recipient will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (43 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1386), Executive Order 11738, and the Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on Environmental Protection Agency List of Violating Facilities. The Municipality will report violations to the grantor agency and to the U.S.E.P.A. Assistant Administrator for Enforcement (N-329).

ATTACHMENT B

I. CERTIFICATIONS – Durham County

II. This is to certify, that Durham County, the sub-recipient of Job Access Reserve Commute (JARC) grant funds have adhered to the following policies and requirements:

1. Services are being billed only for approved, reimbursable and eligible grant project activities
2. Durham County is in compliance with FTA Drug and Alcohol Testing requirements (copy of the Town's Drug and Alcohol testing Policy is attached)
3. Durham County shall comply with all the provisions of Section 3 of the Pass-through Agreement.
4. Durham County is in compliance and shall comply with USDOT Title VI requirements
5. Services for which grant was approved was not used exclusively for school transportation
6. Durham County has provided the Designated Recipient all of the following required reports along with applicable supporting documentation:
 - 6.1. Annual Reporting Requirements
 - 6.1.1. Actual or estimated (specify) number of jobs that can be accessed as a result of geographic or temporal coverage of JARC project(s) implemented in the reporting year.
 - 6.1.2. Actual or estimated number of riders (as measured by one-way trip) provided as a result JARC project implement in the current reporting year.
 - 6.1.3. Efforts conducted to procure from DBE vendors.
 - 6.1.4. Vehicle conditions report (If applicable)
 - 6.1.5. Disclosure of any audit findings relevant to FTA Section 5316 Job Access Reverse Commute (JARC) grant funds (If applicable)
 - 6.1.6. Financial status report
 - 6.2. Quarterly Reporting Requirements–
 - 6.2.1. Project progress report (in a summary narrative format)
 - 6.2.2. Local matching sources used (fiscal year approved, budget account)
 - 6.2.3. Passengers per day
 - 6.2.4. Average passenger revenue
 - 6.2.5. Net cost per passenger
 - 6.2.6. Vehicle miles traveled
 - 6.2.7. Number of passenger trips provided
 - 6.2.8. Revenue service hours provided
 - 6.3. Additional Reports
 - 6.3.1. If additional reporting requirements are deemed necessary, these items will be identified specifically based on guidance by FTA C 9050.1 (NF).

President/Administrator (Name)

President/Administrator (Signature)

Date